

5.400 REQUIREMENTS FOR PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248**5.401 Purpose and Applicability**

This rule establishes minimum filing requirements for petitions to construct electric generation, electric transmission, and natural gas facilities pursuant to 30 V.S.A. § 248. In addition, the rule clarifies certain facets of the Section 248 review process. This rule is not intended to supplant any of the requirements of Section 248. Unless specifically stated, this rule does not supplant any requirements of other Public Service Board ("Board") Rules and Procedures. Unless specifically stated, the requirements of this rule do not apply to petitions filed under subsections 248(j) or 248(k). The requirements of this rule do not apply to petitions for net metering systems filed under Board Rule 5.100.

5.402 Filing Requirements

- (A) Submission to Local and Regional Bodies. Prior to filing the petition with the Board, the petitioner shall submit plans for construction to affected municipal and regional planning commissions, and municipal legislative bodies. This submission shall be made at least 45 days prior to filing the petition with the Board, except that the submission shall be made at least 21 days prior to such filing if the proposed project consists solely of the relocation of transmission facilities. This notice shall include a reference to the Board's "Guide to the Vermont Public Service Board's Section 248 Process," available on the Board's website. At this time, petitioner shall inform the municipal and regional planning commissions of the requirement in Section 248(f) that "Such commissions shall make recommendations, if any, to the Public Service Board and to the petitioner at least 7 days prior to filing of the petition with the Public Service Board" and of the opportunity for those commissions to provide revised recommendations pursuant to Board Rule 5.402(A)(1)(b), below. Petitioner must inform the municipal and regional planning commissions of its intended filing date. Any of the entities entitled to receive notice under this section may waive the 45-day notice requirement.
- (1) In its review of the proposed project under Section 248(b)(1), the Board will give due consideration to any recommendations filed by municipal and regional planning commissions at least seven days prior to the intended filing date and any revised recommendations filed within 45 days after the date that the petition is filed with the Board pursuant to Board Rule 5.402(A)(2) below.
 - (2) Affected municipal and regional planning commissions may provide revised recommendations within 45 days of the date on which petitioner has filed a petition with the Board if the petition contains new or more detailed information that was not previously included in the petitioner's filing with the municipal and regional planning commissions pursuant to Section 248(f).
 - (3) Recommendations made to the Board pursuant to Section 248(f), or the lack of such recommendations, shall not preclude municipal and regional planning commissions from presenting evidence during technical hearings if granted party status.
 - (4) The plans for construction submitted under this subsection must include sufficient information to understand the overall proposed project, including but not limited to: identification and analysis of aesthetic impact; project plans in as much detail as the petitioner reasonably can provide (including a schematic); a description of how equipment and materials will be transported to the site; and

plans which indicate the approximate location of all proposed new infrastructure (e.g., transmission, substation, roads, etc.) relative to the existing conditions. With the construction plans, the petitioner shall include a description of its evaluation of alternatives to the proposed project and the reasons why those alternatives were rejected.

- (B) Notice to Adjoining Landowners. Petitioner must provide notice of the proposed project to each adjoining property owner at the time that the petition is filed with the Board.
- (1) This notice shall include, at a minimum, a reference to the Board's "Guide to the Vermont Public Service Board's Section 248 Process," available on the Board's website, a general description of the type and approximate location of the facilities and upgrades proposed, a statement that a petition for approval is being filed with the Board, and an identification of the locations at which project plans and the petition can be viewed and the hours during which those documents may be viewed. Such locations shall include at least the offices of the petitioner, the municipal and regional planning commissions, and the Board.
 - (2) For purposes of this rule, "adjoining property owner" means a person who owns land in fee simple, if that land:
 - (a) With respect to a transmission line, will be crossed by the right-of-way for that line, shares a property boundary with such right-of-way, or would share a boundary with the right-of-way but for the presence of an intervening river, stream, public highway, or railroad line which shares a boundary with the right-of-way; or
 - (b) With respect to a generation facility, substation, or other transmission facility not part of a transmission line, shares a property boundary with the tract of land on which that facility or substation is located or is adjacent to that tract of land and the two properties are separated only by a river, stream, railroad line or public highway.
 - (3) Petitioner must use good faith efforts to notify adjoining property owners. Unless otherwise shown, good faith efforts shall mean utilizing the certified grand list as it existed no more than 60 days prior to the date notice is provided to identify adjoining property owners. Petitioner shall include a statement with the petition that it has complied with this provision and include in the statement the date the grand list was certified. No defect in the provision of notice to adjoining property owners under this rule shall invalidate an action by the Board on a petition for a certificate of public good under 30 V.S.A. § 248.
- (C) Filing Contents.
- (1) The petition must include sufficient information for the Board to evaluate the proposed project. This should include, as appropriate:
 - (a) A U.S. Geological Survey topographic map showing the location of the proposed project.
 - (b) An aerial photograph of the proposed project site that clearly marks existing structures and significant natural and man-made features when available, or an equivalent computer-generated image that provides similar detail.

- (c) A site plan that includes:
 - (i) proposed improvements;
 - (ii) existing topography at the site and proposed changes in grading;
 - (iii) existing significant natural and man-made features (including but not limited to water bodies, wetlands, tree lines, buildings, and roads);
 - (iv) a cross-section of the site;
 - (v) color photographs of the project site; and
 - (vi) proposed measures to mitigate impacts of the proposed project.
 - (d) Prefiled evidence (testimony and exhibits) that explains how the proposed project complies with each of the separate criteria of 30 V.S.A. § 248(b); including the criteria specified in of 10 V.S.A. § 1424a(d) and 10 V.S.A. § 6086(a)(1) through (8) and (9)(K), incorporated through Section 248(b)(5).
 - (e) An index, organized according to the criteria of 30 V.S.A. § 248(b), that identifies with specificity the prefiled evidence that addresses each criterion, including the incorporated criteria of Section 248(b)(5).
- (2) For any non-utility petition, the petitioner must include a plan for decommissioning the project at the end of its useful life. This requirement does not apply to proposed generation facilities with a capacity of one MW or less.
 - (3) Petitioners are encouraged to provide plans with the petition at a design level of detail. A petitioner seeking conceptual approval, followed by post-certification review of final designs, shall include in its petition a request for such approval and provide supporting evidence to show that the cost of the petitioner's submitting design details with the petition would outweigh the benefits of such submission, including but not limited to the evaluation of site-specific impacts, accuracy in the findings to be made by the Board, and finality of the Board's decision on the petition. In approving or denying such a request for conceptual approval, the Board may consider additional factors that it deems relevant.
 - (4) Upon filing of any petition under 30 V.S.A. § 248 and before issuing formal notice or otherwise initiating proceedings on such a petition, the Board may, in its discretion, determine that the petition is not complete or does not sufficiently address the requirements of Section 248 or this rule, including providing information to support positive findings on all of the criteria of Section 248(b). The Board shall notify the affected petitioner of any such determination and shall include a statement of the deficiencies in such notice. Any petition that is the subject of such a determination shall be deemed not filed, and no proceedings thereon shall be initiated, until the Board determines that the petitioner has taken sufficient steps to remedy the deficiencies set forth by the Board.
 - (a) Unless the Board determines otherwise, a petition that is deemed not filed does not invalidate the notice provided under the requirements of 30 V.S.A. § 248 and this Rule.
 - (b) The Board's acceptance of a petition under this provision or initiation of proceedings under 30 V.S.A. § 248 shall not constitute a determination that the petitioner has met its burden of proof or burden of production.

- (D) Related Improvements. The Petition must address and provide sufficient evidence on all improvements, temporary or permanent, that are reasonably related to facilities for which a certificate of public good is required under 30 V.S.A. § 248.
- (E) Filing Format. In addition to the filing requirements of Board Rule 2.204, the petition and accompanying prefiled testimony and exhibits must be filed with the Board in an electronic format, suitable for web posting.
- (F) Filings Under Section 248(j).
 - (1) An application filed pursuant to Section 248(j) must be complete at the time it is filed. If a petitioner intends to rely on a permit from other regulatory agencies or a study to demonstrate compliance with the requirements of Section 248(b), rather than providing evidence to satisfy such criteria, such studies and permits must be included with the petition.
 - (2) Subsections 5.402(C), with the exception of 5.402(C)(1)(e), 5.402(C)(3), and 5.402(E), shall apply to all petitions filed under Section 248(j).
 - (3) Petitioners need not provide notice to adjoining property owners. However, petitioners shall include with the petition the names and addresses of all adjoining property owners. Petitioner must use good faith efforts to identify adjoining landowners. Unless otherwise shown, good faith efforts shall mean utilizing the certified grand list as it existed no more than 60 days prior to the date notice is provided to identify adjoining landowners. Petitioner shall include a statement with the petition that it has complied with this provision and include in the statement the date the grand list was certified.
 - (a) Petitioners do not need to include the names and addresses of adjoining property owners if the proposed project consists of reconductoring within an existing right-of-way, provided that the height of any new structure required for the reconductoring is not more than 10 feet higher than the structure being replaced. If any pole height increases by more than 10 feet, petitioner shall provide the names and addresses of the property owners who adjoin the right-of-way at the immediate location of such pole.

5.403 Filing Requirements for Petitions to Construct Wind Generation Facilities

- (A) Definition. For purposes of this section, "wind generation facility" means a generation facility that utilizes wind to produce electricity.
- (B) Requirements. In addition to the requirements of this rule, petitions to construct wind generation facilities must meet the following requirements:
 - (1) For petitions involving wind generating facilities, notice must be provided to all municipal planning commissions, municipal governments, and regional planning commissions for all towns wholly or partially within a radius of a minimum of ten miles of each proposed turbine.
 - (2) In addressing the impact of the proposed project on orderly development, the petitioner must include an assessment of the impact on all towns within this ten-mile radius.
 - (3) The petition must include a view-shed analysis that includes an analysis of aesthetic impacts for a ten-mile radius from the proposed project site.

- (C) Non-applicability. This section does not apply to net metered wind systems pursuant to 30 V.S.A. § 219a or wind measurement towers.

5.404 Requirements Pertaining to Certain Criteria

- (A) Section 248(b)(2) Need. For petitions to construct or modify transmission facilities in a national interest electric transmission corridor designated by the federal Secretary of Energy under 16 U.S.C. § 824p(a), petitioners must, as part of its demonstration on need, specifically address the interstate benefits expected to be achieved by the proposed project.
- (B) Section 248(b)(6) Integrated Resource Plans. Any petition from an investor-owned utility, municipal electric department, or cooperative electric utility which does not have an approved integrated resource plan pursuant to 30 V.S.A. § 218c must provide evidence that its proposed project complies with principles of integrated resource planning, as defined in 30 V.S.A. § 218c, including consideration of environmental effects.
- (C) Section 248(b)(7) Consistency with Electric Energy Plan. Except for petitions concerning natural gas facilities that are not part of or reasonably related to an electric generation facility, the petitioner must provide evidence that specifically demonstrates compliance with the electric energy plan approved by the Department of Public Service under 30 V.S.A. § 202, applying the relevant portions of that plan to the facts of the proposed project. If the petitioner seeks a determination that good cause exists to permit the proposed action notwithstanding inconsistency with that plan, the petitioner must request such a determination and provide evidence demonstrating the existence of such good cause.

5.405 Site Visits

The Board may conduct one or more site visits to view the location of the proposed project. The purpose of the site visit shall be to assist the Board and the parties in understanding the proposed project and the issues that the proposed project may present. The site visit will typically include a discussion of the following matters: a description of the proposed project and its location(s); a viewing of the existing conditions at the location(s) of the proposed project; and an explanation of how the existing conditions would be altered by the proposed project. The site visit may also include identification of relevant landscape features, discussion of how such landscape features have affected or potentially should affect the project design and location, identification of and visits to potential alternative locations for the proposed project, and any other relevant matters for which a first-hand viewing of the site(s) may assist in understanding the issues before the Board. Observations and facts from the site visit shall not be considered as evidence unless the Board, on its own motion or on the request of a party, specifically enters them into the evidentiary record.

5.406 Public Hearings

The Board will typically hold one public hearing on a petition filed under Section 248, except that it typically will not hold a public hearing on a petition processed under Section 248(j). If the Board is requested and there is sufficient reason, the Board will hold one or more additional public hearings. Also, the Board on its own motion may hold one or more additional public hearings. With respect to petitions filed under Section 248(j), the Board may in its discretion determine to hold one or more public hearings upon request or on its motion.

5.407 Substantial Change Prior to Decision on a Petition

If the petitioner makes a substantial change to the proposed project after the petition has been filed with the Board, the petitioner is required to provide notice of this change to all parties and entities entitled to notice under this Rule and Section 248, including any newly affected adjoining property owners, as defined by this rule. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the state under Section 248(a).

5.408 Amendments to Projects Approved under Section 248

An amendment to a certificate of public good for construction of generation or transmission facilities, issued under 30 V.S.A. § 248, shall be required for a substantial change in the approved proposal. For the purpose of this subsection, a substantial change is a change in the approved proposal that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the state under Section 248(a).

5.409 Costs of Section 248 Projects

Where a Vermont utility is the petitioner, or the costs of a project or a portion thereof are eligible to be recovered from ratepayers, the petitioner shall regularly monitor and update the estimated capital costs of any project it has proposed for or received approval under Section 248. When the estimated capital costs of such a project increase by 20 percent, and the increase is at least \$25,000, or such other amount as the Board may order in a given proceeding or prescribe in a Procedure, prior cost estimates submitted by the petitioner to the Board, the petitioner shall notify the Board and parties of the new capital cost estimates for the project and the reasons for the increase. This requirement to monitor, update, and report shall continue until construction of the project has been completed.

5.410 Waiver

For good cause, the Board may waive any of the requirements of this Rule.